

**THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

**MICHAEL P. AND SHELLIE GILMOR,
et al.,**

Plaintiffs,

vs.

**PREFERRED CREDIT CORPORATION,
et al.,**

Defendants.

Case No. 4:10-cv-00189-ODS

**JOINT STATUS REPORT AND
PROPOSED SCHEDULING ORDER/DISCOVERY PLAN**

Plaintiff and Defendants, by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 16(b) and 26(f), and the Court's *Order Directing the Parties to File a Joint Status Report* (Doc. No. 76), submit the following Report and Proposed Scheduling Order and proposed Discovery Plan.

PLAINTIFFS' PRELIMINARY STATEMENT

Plaintiffs propose the time frames set forth herein for a variety of reasons, which are based on their extensive experience and practice in this and other Missouri Second Mortgage Loans Act class actions, and which include, without limitation, the following:

There are 28 Defendants comprised of a handful of securitization groups or related entities represented by the same counsel (all of whom are experienced in these Second Mortgage Loans Act class actions). Due to the previously pending motions, most of the Defendants have not provided any discovery at all to Plaintiffs. For example, although there are over 500 Class loans at issue, Defendants have produced only approximately 130 loan files and loan payment

histories. The following areas of document discovery remains: (1) production of the Class members' loans files and loan payment histories; (2) production of records concerning Defendants' acquisitions of the Class members' loans from the lender, Preferred Credit Corp., or an intervening assignee; (3) production of records concerning Defendants' sales or securitization of the Class members' loans; and (4) production of records related to or that would evidence Defendants' due diligence or scrutiny of the Class members' loans at the time of acquisition. Plaintiffs are unable to take depositions, or to determine which depositions are necessary, or to determine what follow-up discovery is necessary or appropriate in the absence of these documents.

The ease of obtaining this discovery is complicated or made difficult as the result of the passage of time, turmoil in the mortgage finance industry, and corporate transitions, successions, and cessations. Further, many of these Defendants and their records are located out of state, are in storage, and knowledgeable employees have left the entities that are subject to the discovery.

During the proposed time, Plaintiffs may need to take depositions of Defendants and third parties (such as loan servicers and custodians) to locate records or to authenticate (because, historically, some of the defendants refuse to authenticate their own records or to admit that they are even their own records). It is Plaintiffs' experience in these Missouri Second Mortgage Loan Act class actions that it is often difficult for Defendants to locate records and identify knowledgeable Rule 30(b)(6) witnesses. Hence, there is often a substantial delay in obtaining records and then the issuance of a Rule 30(b)(6) deposition notice and Defendants' response that they have identified knowledgeable witnesses.

Next, following document discovery Plaintiffs will be able to prepare the electronic data and records that they will use to establish such things as Defendants' class wide liability for

violations of the MSMLA and the Class members' damages, and have information concerning Defendants' operations and practices, for expert review for purposes of their testimony relevant to punitive damages.

Altogether, Plaintiffs suggest that the proposal below is reasonable and necessary given the matters set forth in the Joint Status Report (Doc. 75).

DEFENDANTS' PRELIMINARY STATEMENT

Defendants disagree with any implication in Plaintiffs' preliminary statement that Defendants are in any way responsible for difficulties that Plaintiffs believe they may face in completing discovery in this action. Defendants, however, recognize that given the nature of this class action case, the number of loans at issue, the passage of time, the size of Plaintiffs' counsel's firm and case loads, Plaintiffs may need some time to complete discovery, although any discovery could be streamlined substantially if Defendants who have no connection to the named Plaintiffs' loans or over whom there is no personal jurisdiction are dismissed as requested in Defendants' pending motions to dismiss. Thus, Defendants are not opposed to the Plaintiffs' dates except as specifically set forth below. However, Defendants believe that reasonable limitations on discovery consistent with the federal rules of civil procedure should be put into place.

PARTIES' PROPOSED SCHEDULE

1. **Plaintiffs propose:** Defendants shall supplement their prior discovery responses and document productions as necessary on or before October 22, 2010. (*See Doc. 76.*)

Defendants propose: The parties shall supplement their prior discovery responses and document productions in accordance with the requirements of the federal rules of civil procedure.

2. Any motion to join additional parties shall be filed on or before

Plaintiffs propose: August 5, 2011, to allow Plaintiffs sufficient time to identify and join any additional loan assignees based on Defendants' timely responses to discovery and pursuit of non-parties through document discovery and depositions.

Defendants propose: November 15, 2010.

3. Any motion to amend the pleadings shall be filed on or before _____.

Plaintiffs propose: August 5, 2011, to allow Plaintiffs sufficient time to identify and join any additional loan assignees based on Defendants' timely responses to discovery and pursuit of non-parties through document discovery and depositions.

Defendants propose: November 15, 2010.

4. Fact Discovery
 - a. Depositions.

Plaintiffs propose: There shall be no pre-set limit on the number of depositions taken in this case. Given the number of parties (28 Defendants at the time of removal) and the hundreds of loans (no fewer than 514) the use of any pre-set limit is not warranted and will only serve as a basis for discovery disputes.

Defendants propose: Ten (10) depositions, in addition to those taken previously, per side as contained in Fed. R. Civ. P. 30 shall be recognized. This deposition limit may be revised by order of the Court or by agreement of the parties.

- b. Interrogatories.

Plaintiffs propose: There shall be no pre-set limit on the number of interrogatories to be propounded in this case. Given the number of parties (28 Defendants at the time of removal) and the hundreds of loans (no fewer than 514) the use of any pre-set limit is not warranted and will only serve as a basis for discovery disputes.

Defendants propose: No more than twenty-five (25) interrogatories, including those already served, may be directed to any party. This interrogatory number may be revised by order of the court or by agreement of the parties.

c. Requests for Admission.

Plaintiffs propose: There shall be no pre-set limit on the number of requests for admission to be propounded in this case. Given the number of parties (28 Defendants at the time of removal) and the hundreds of loans (no fewer than 514) the use of any pre-set limit is not warranted and will only serve as a basis for discovery disputes.

Defendants propose: No more than fifty (50) requests for admission may be directed to any party. This limit may be revised by order of the Court or by agreement of the parties.

d. Discovery motions. All discovery disputes shall be raised with the Court on or before _____.

Plaintiffs propose: August 31, 2012

Defendants do not object.

e. Close of Fact Discovery. All pretrial fact discovery shall close _____.

Plaintiffs propose: August 31, 2012

Defendants do not object.

5. Expert disclosures:

a. Plaintiffs shall designate any expert witness they intend to call at trial on or before _____, including all reports and other information required under Fed. R. Civ. P. 26.

Plaintiffs propose: September 28, 2012

Defendants do not object.

b. Defendants shall designate any expert witness they intend to call at trial on or before _____, including all reports and other information required under Fed. R. Civ. P. 26.

Plaintiffs propose: November 30, 2012

Defendants do not object.

6. Close of all pretrial discovery _____.

Plaintiffs propose: January 18, 2013

Defendants do not object.

7. Filing of Motions to Decertify Class

a. Any motion to decertify a class and suggestions in support shall be filed on or before _____.

Plaintiffs propose: August 31, 2011

Defendants propose: Defendants believe that it is more appropriate to brief class decertification issues after the close of fact discovery (August 31, 2012).

b. Suggestions in opposition to motions to decertify a class shall be filed pursuant to and in accordance with Local Rule 7.1.

c. Reply suggestions in support of decertification shall be filed pursuant to and in accordance with Local Rule 7.1.

8. Dispositive motions, except those under Fed. R. Civ. P. 12(h)(2) or (3), shall be filed on or before _____, in accordance with Fed. R. Civ. P. 56 and Local Rule 56.1 and shall comply with Local Rule 56.1.

Plaintiffs propose: February 22, 2013

Defendants do not object.

9. Plaintiffs anticipate their case in chief may take 15–20 days. Defendants anticipate their case may take 10–12 days.

Dated: October 22, 2010

/s/ R. Frederick Walters

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